

ASSEMBLY BILL

No. 2649

Introduced by Assembly Member Torrico

February 19, 2010

An act to amend Section 31 of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2649, as introduced, Torrico. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee. Existing law authorizes many of these boards to impose fees on its licensees to cover its costs in administering its respective provisions and in some cases these funds are deposited into continuously appropriated funds.

This bill would require a state governmental licensing entity, as defined and excluding the Department of Motor Vehicles and the Contractor's State License Board, to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the Franchise Tax Board, if a licensee fails to pay taxes for which a

notice of state tax lien has been recorded, as specified, to mail a preliminary notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid taxes by a certain date shall be automatically suspended, except as specified, and would require the Franchise Tax Board to provide a notice of suspension to the applicable state governmental licensing entity and to mail a notice of suspension to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. The bill would authorize a state governmental licensing entity, as specified, to impose a fee on a licensee with a suspended license in an amount necessary to cover its administrative costs. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 31 of the Business and Professions Code
- 2 is amended to read:
- 3 31. (a) As used in this section, “board” means any entity listed
- 4 in Section 101, the entities referred to in Sections 1000 and 3600,
- 5 the State Bar, the Department of Real Estate, and any other state
- 6 agency that issues a license, certificate, or registration authorizing
- 7 a person to engage in a business or profession.
- 8 (b) Each applicant for the issuance or renewal of a license,
- 9 certificate, registration, or other means to engage in a business or
- 10 profession regulated by a board who is not in compliance with a
- 11 judgment or order for support shall be subject to Section ~~11350.6~~
- 12 ~~of the Welfare and Institutions Code~~ 17520 of the Family Code.
- 13 (c) “Compliance with a judgment or order for support,” has the
- 14 meaning given in paragraph (4) of subdivision (a) of Section
- 15 ~~11350.6 of the Welfare and Institutions~~ 17520 of the Family Code.
- 16 (d) *Each licensee of a board, other than the Contractor’s State*
- 17 *License Board, who has not paid applicable state income taxes,*
- 18 *including interest, penalties, and other fees, when due shall be*
- 19 *subject to Section 19265 of the Revenue and Taxation Code.*
- 20 SEC. 2. Section 19265 is added to the Revenue and Taxation
- 21 Code, to read:

1 19265. (a) (1) (A) State governmental licensing entities, as
2 defined in paragraph (4) of subdivision (e), shall provide to the
3 Franchise Tax Board the name and social security number or
4 federal taxpayer identification number, as applicable, of each
5 licensee of that state governmental licensing entity.

6 (B) State governmental licensing entities shall provide to the
7 Franchise Tax Board the information described in subparagraph
8 (A) at a time that the Franchise Tax Board may require.

9 (2) If any licensee has failed to pay taxes, including any
10 penalties, interest, and any applicable fees, imposed under Part 10
11 (commencing with Section 17001), Part 11 (commencing with
12 Section 23001), or this part, for which a notice of state tax lien has
13 been recorded in any county recorder's office in this state, pursuant
14 to Chapter 14 (commencing with Section 7150) of Division 7 of
15 Title 1 of the Government Code, the Franchise Tax Board shall
16 mail a preliminary notice of suspension to the licensee indicating
17 that the license will be suspended by a date certain, which shall
18 be no earlier than 150 days after the mailing of the preliminary
19 notice of suspension, unless prior to the date certain the licensee
20 pays the unpaid taxes or enters into an installment payment
21 agreement, as described in Section 19008, to satisfy the unpaid
22 taxes. The preliminary notice of suspension shall also advise the
23 licensee of the opportunity to request deferral or cancellation of a
24 suspension pursuant to subdivision (b).

25 (3) If any licensee subject to paragraph (2) fails to pay the unpaid
26 taxes or to enter into an installment payment agreement, as
27 described in Section 19008, to satisfy the unpaid taxes prior to the
28 date certain provided in the preliminary notice of suspension, his
29 or her license shall be automatically suspended by operation of
30 this section, except as provided in subdivision (b), and the
31 Franchise Tax Board shall provide a notice of suspension to the
32 applicable state governmental licensing entity and shall mail a
33 notice of suspension to the licensee. The rights, powers, and
34 privileges of any licensee whose license has been suspended
35 pursuant to this section shall be subject to the same prohibitions,
36 limitations, and restrictions as if the license were suspended by
37 the state governmental licensing entity that issued the license.

38 (4) Upon compliance by the licensee with the tax obligation,
39 either by payment of the unpaid taxes or entry into an installment
40 payment agreement, as described in Section 19008, to satisfy the

1 unpaid taxes, a suspension pursuant to this subdivision shall be
2 canceled. The Franchise Tax Board shall, within 10 business days
3 of compliance by the licensee with the tax obligation, provide a
4 notice of cancellation to the state governmental licensing entity
5 and mail a notice of cancellation to the licensee indicating that the
6 unpaid taxes have been paid or that an installment payment
7 agreement, as described in Section 19008, has been entered into
8 to satisfy the unpaid taxes and that the suspension has been
9 canceled.

10 (5) If a license is not suspended, or if the suspension of a license
11 is canceled, based on the licensee entering into an installment
12 payment agreement as described in Section 19008, and the licensee
13 fails to comply with the terms of the installment payment
14 agreement, that license shall be suspended as of the date that is 30
15 days after the date of termination of that installment payment
16 agreement. If a license is suspended pursuant to this paragraph,
17 the Franchise Tax Board shall provide notice of suspension to the
18 applicable state governmental licensing entity and mail a notice
19 of suspension to the licensee.

20 (b) (1) The Franchise Tax Board may defer or cancel any
21 suspension authorized by this section if a licensee would experience
22 financial hardship. The Franchise Tax Board shall, if requested by
23 the licensee in writing, provide for an administrative hearing to
24 determine if the licensee would experience financial hardship from
25 the suspension of his or her license.

26 (2) The request for a hearing specified in paragraph (1) shall be
27 made in writing within 30 days from the mailing date of the
28 preliminary notice described in subdivision (a).

29 (3) The Franchise Tax Board shall conduct a hearing within 30
30 days after receipt of a request pursuant to paragraph (1), unless
31 the Franchise Tax Board postpones the hearing, upon a showing
32 of good cause by the licensee, in which case a suspension pursuant
33 to subdivision (a) shall be deferred until the hearing has been
34 completed.

35 (4) A licensee seeking relief under this subdivision shall only
36 be entitled to relief described in paragraph (1) if the licensee
37 provides the Franchise Tax Board with financial documents that
38 substantiate a financial hardship, and agrees to an installment
39 payment arrangement.

1 (5) If the deferral of a suspension of a license under this
2 subdivision is no longer operative, that license shall be suspended
3 as of the date that is 30 days after the date the deferral is no longer
4 operative. If a license is suspended pursuant to this paragraph, the
5 Franchise Tax Board shall provide notice of suspension to the
6 applicable state governmental licensing entity and mail a notice
7 of suspension to the licensee.

8 (c) Notwithstanding any other provision of law, a state
9 governmental licensing entity may, with the approval of the
10 appropriate department director or governing body, impose a fee
11 on licensees whose license has been suspended as described in
12 subdivision (a). The fee shall not exceed the amount necessary for
13 the licensing entity to cover its costs in carrying out the provisions
14 of this section. Fees imposed pursuant to this section shall be
15 deposited in the fund in which other fees imposed by the state
16 governmental licensing entity are deposited and shall be available
17 to that entity upon appropriation in the annual Budget Act.

18 (d) The process described in subdivision (b) shall constitute the
19 sole administrative remedy for contesting the suspension of a
20 license under this section. The procedures in the administrative
21 adjudication provisions of the Administrative Procedure Act
22 (Chapter 4.5 (commencing with Section 11400) and Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title
24 2 of the Government Code) shall not apply to the suspension of a
25 license pursuant to this section.

26 (e) For purposes of this section and Section 19571, the following
27 definitions shall apply:

28 (1) "Financial hardship" means financial hardship within the
29 meaning of Section 19008, as determined by the Franchise Tax
30 Board, where suspension of a license will result in the licensee
31 being financially unable to pay any part of the amount described
32 in subdivision (a) and the licensee is unable to qualify for an
33 installment payment arrangement as provided for by Section 19008.
34 In order to establish the existence of a financial hardship, the
35 licensee shall submit any information, including information related
36 to reasonable business and personal expenses, requested by the
37 Franchise Tax Board for the purpose of making that determination.

38 (2) "License" includes a certificate, registration, or any other
39 authorization to engage in a profession or occupation issued by a
40 state governmental licensing entity.

(3) “Licensee” means an individual authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) “State governmental licensing entity” means any entity listed in Section 101, 1000, or 19420 of the Business and Professions Code, the office of the Attorney General, the Department of Insurance, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license authorizing an individual to engage in a profession or occupation. Notwithstanding the foregoing, “state governmental licensing entity” shall not include the Department of Motor Vehicles or the Contractor’s State License Board.

(f) Implementation of this section shall be contingent on the appropriation of funds for the purposes of this section in the annual Budget Act.

SEC. 3. Section 19571 is added to the Revenue and Taxation Code, to read:

19571. (a) The Franchise Tax Board shall disclose to state governmental licensing entities information regarding suspension of a license pursuant to Section 19265.

(b) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the Franchise Tax Board, pursuant to this section, except to inform the public of the suspension of a license pursuant to Section 19265.

(c) For purposes of this section, the definitions in Section 19265 shall apply.

SEC. 4. The Legislature hereby finds and declares the following:

(a) It is the intent of the Legislature that, consistent with the decision in *Gallo v. United States District Court* (9th Cir. 2003) 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of a professional or occupational license pursuant to this act for failure to pay delinquent taxes is a legislative act, for which due process is satisfied by the legislative notice and hearing procedures.

(b) To prevent financial hardship, Section 19265 of the Revenue and Taxation Code, as added by this act, grants a delinquent taxpayer the opportunity for an additional hearing for financial

- 1 hardship prior to the suspension of a professional or occupational
- 2 license.

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